ANNATHURAI MC THURAIAPPAH A

v.

MABEL NIRMALA A JAMES & ANOR

HIGH COURT MALAYA, KUALA LUMPUR B
LEE SWEE SENG JC
[SUIT NO: 22NCC-1223-08-2012]
19 MARCH 2013

LEGAL PROFESSION: *Practice of law - Partnership between solicitors - Whether goodwill payable to retiring partner in equity - Whether culture of firm supported such practice - Whether retiring partner represented that goodwill was not payable by incoming partners - Whether inequitable for retiring partner to resile from position taken* C

The plaintiff, one of two partners in a legal firm, held an 80% share in the firm and specialised in litigation matters. The other partner, Sulaiman Hew, who took charge of conveyancing matters, held the remaining 20% share. The defendants were initially legal assistants in the firm assisting the plaintiff. The plaintiff became afflicted with Parkinson's Disease and due to his failing health, had stopped accepting new cases. Due to this, the firm's income from the litigation department began to decline. Because of his condition, the plaintiff finally left the firm, but before that he had negotiations with the defendants to become partners in the firm in his place. Various draft agreements to that end were exchanged between the parties but nothing was finalised or executed. After the plaintiff's retirement, the firm continued its existence with the defendants and Sulaiman Hew as the partners. The plaintiff subsequently filed the instant suit claiming, *inter alia,* (i) that the defendants ought, in equity, to pay him goodwill for their admission into the firm as partners; (ii) that an account should be ordered of the fees the firm had collected after his retirement in respect of work done on files before he left the firm and (iii) that he was entitled to an 80% share of such collections. The defendants, *inter alia,* contended that at all material times, and in the draft agreements that were exchanged, the plaintiff had represented that no goodwill was payable by them. In any event, D E F G H I

they averred, they would not have agreed to take over the plaintiff's practice if payment of goodwill had been a condition as the plaintiff had left the litigation department with a huge amount in liabilities and only a few files that could pay relatively low fees.

Held (allowing claim in part):

(1) Looking at the overall circumstances of the case and in the light of representations made by the plaintiff, the culture of the firm and the fact that Sulaiman Hew himself would not have agreed to payment of goodwill when the plaintiff left the partnership and also considering the gradual decline in work as a result of the plaintiff's illness, it was inequitable for the plaintiff to now claim for goodwill. (para 36)

(2) The defendants had relied on the oral and written representations that no goodwill payment was required of them and the plaintiff was estopped from asserting the exact opposite now. The defendants had continued with the law practice and acted on the plaintiff's representations. It would be inequitable to allow the plaintiff to resile from the position he had taken. (para 30)

(3) It had not been the culture of the firm to charge for goodwill when a partner joined the firm or when a partner left it. When he joined the firm, the plaintiff was not required to pay any goodwill to the founding partners; neither did he have to contribute any sum as goodwill when one of the founding partners left the firm. (paras 32 & 33)

(4) There was an agreement that fees collected by the firm in respect of work done by the plaintiff before he retired as partner would be split 80%:20% between the plaintiff and Sulaiman Hew. Accordingly, the Registrar was directed to conduct an accounts inquiry to ascertain the amounts so collected with respect to the litigation files, determine how much of the plaintiff's liabilities incurred by him before he left the firm had been discharged and allow the defendants, for their efforts in collecting the fees and for their administrative work, to take 20% of the surplus, if any, remaining after such discharge had been made. Any balance sum thereafter remaining was to be apportioned 80:20 between the plaintiff and Sulaiman Hew. (paras 40 & 47)

Case(s) referred to:

Commissioner for Inland Revenue v. Muller & Co's Margarine Ltd [1901] AC 217 ***(refd)***

Mohamed Ismail Mohamed Shariff v. Zain Azahari Zainal Abidin & Ors [2010] 5 CLJ 153 CA ***(refd)***

Rush & Tompkins Ltd v. Greater London Council and Another [1988] 3 All ER 737 ***(refd)***

State of Rajasthan and Anor v. The Bundi Electric Supply Co AIR 1970 Raj 36 ***(refd)***

Teoh Swee Hee v. Tio Hock Thye & Anor [1997] 1 CLJ Supp 400 HC ***(refd)***

Legislation referred to:

Partnership Act 1961, s. 44

Other source(s) referred to:

Halsbury's Laws of England, 4th edn, vol 33(1), para 375

For the plaintiff - K Shanmuga (Aston Paiva with him); M/s Kanesalingam & Co

For the defendants - Mary M Anthony (Zarina Begum with her); M/s Vanan & Co

Reported by Ashok Kumar

JUDGMENT

Lee Swee Seng JC:

[1] This case involves a law partnership dispute. Lawyers are known to be able to take care of other people's problems but when it comes to their own, there may not even be a written partnership agreement governing the relationship of the partners *inter se*. Little wonder that when a partner leaves a partnership there will invariably be disputes over payment of goodwill, collection of fees for work already done and the continuation of the work on the files by the current or incoming partners. When the problems are intractable the parties will commence a legal action as can be seen in the many cases that have come before the courts over law partnerships disputes. This case explores some of the issues in the aftermath of a partner exiting from a legal firm *albeit* a rather abrupt one at that.

Parties

[2] The plaintiff was a partner with 80% share in the litigation practice of the legal firm called Hamzah Sulaiman & Partners (the said firm). He joined the legal firm in 1991. The defendants were

A the legal assistants of the said firm and were under the supervision of the plaintiff at all material times. The defendants reported to the plaintiff and were handling the litigation files as instructed by the plaintiff.

B **[3]** The other partner of the litigation practice of the said firm was one Mr Sulaiman Hew with a 20% share. He is not involved in the day-to-day running of the litigation department of the said firm and is in charge of the conveyancing department of the said firm. Both the litigation and conveyancing departments are housed
C in separate offices.

Problem

[4] The plaintiff was basically the partner primarily and principally in charged of the litigation practice of the said firm from
D 1991 until he left on 31 January 2007. His eventual exit from the said firm was constrained by failing health on account of being stricken by Parkinson's disease, a disorder affecting the motor functions of the human body. It causes slowness of movement and mobility and even slurring of speech in the plaintiff's case. As can
E be seen from the accounts disclosed of the litigation practice of the said firm, income was declining for the past three years prior to the plaintiff leaving the said firm. Indeed the inevitable consequence of the onslaught of the disease was such that the plaintiff had stopped accepting new banking files for some three
F years before he was constrained to leave the said firm.

[5] He left the practice in the hands of the defendants, his legal assistants, in the loose sense of the word where reporting structure of the litigation practice of the said firm was concerned.

G **[6]** There were negotiations as to the smooth sale of the practice to the defendants being naturally positioned and preferred parties for the cessation of the plaintiff as a partner and the defendants continuing on the litigation practice of the said firm in a sort of seamless transition to a reconstituted partnership
H structure.

[7] There were various drafts of the partnership agreement being discussed and exchanged after the plaintiff left the partnership. All the drafts stated and the defendants testified that there were

I

expressed oral representations that there would be no payment of goodwill for the defendants taking over the plaintiff's 80% share in the litigation practice of the said firm. Mr Sulaiman Hew being the 20% partner of the litigation practice of the said firm was only aware of the plaintiff's predicament on or about 11 January 2007 when the plaintiff met up with him in the Royal Lake Club and made the defining and delicate disclosure of his Parkinson's disease. The disease had taken a toll on the plaintiff resulting in the plaintiff's inability on a few occasions in court to make relevant oral submissions and representations on behalf of clients and also inability to articulate coherently at meetings with clients.

[8] Unfortunately no written "Agreement for Retirement from Partnership and Admission of New Partners" ("Retirement from Partnership Agreement") was signed before the plaintiff's exit from the said firm. The defendants carried on from the date of the plaintiff's exit as the 80% partner of the reconstituted partnership with Sulaiman Hew still holding the 20% share that he had previously held.

[9] In spite of the fact that there was no formalised agreement with respect to the plaintiff's exit from and the defendants' entry into the partnership, the plaintiff has urged this court to consider his claim in equity for goodwill of the firm and also for an accounts inquiry into fees collected on files for work done before he left the partnership which fees were collected after he left the partnership and the payment to him of his 80% share as well as an accounting and payment of fees owing to him from two identified clients' files based on an agreed arrangement enforceable in law or in equity with respect to the two clients' files.

Prayers

[10] The plaintiff prayed for the following in his statement of claim dated 2 August 2012:

(a) RM228,995.20 or such other sums as may be assessed for the goodwill acquired by the defendants in the said firm;

(b) An account of all sums received by the said firm and/or the defendants for work done by the said firm prior to 31 January 2007;

A (c) An order that the defendants do pay to the plaintiff 80% of the sums found to have been received by the said firm upon taking the account as aforesaid or such other proportion of the sums as is considered just by the court;

B (d) An order that full particulars of the two clients' and two office accounts of the said firm with copies from 1 February 2007 of all bank statements, invoices and receipt books be delivered by the defendants to the plaintiff;

C (e) An order for the defendants to deliver an account of:

(i) Fees received by the said firm for the works in progress as at 31 January 2007;

(ii) Fees received by the said firm after 31 January 2007 for
D work done before 31 January 2007.

(f) An order that the defendants do permit any firm of certified public accountants appointed by the plaintiff to verify and audit the accounts given pursuant to paras. (d) and (e) above;

E (g) Damages for the fixed assets taken over;

(h) Further or in the alternative, compensation payable in equity or in accordance with s. 44 of the Partnership Act 1961;

F (i) Damages for failure to recover fees owing by Gan Kok Beng and Annie Quah Lay Nah;

(j) Further or in the alternative, an order for the defendants to produce the files relating to work done by the said firm and all documents relating thereto in respect of work done for Gan
G Kok Beng and Annie Quah Lay Nah for the fee payable thereon to be assessed by an advocate and solicitor nominated by the President of the Malaysian Bar and for an order that the defendants pay to the plaintiff 80% of the fee so assessed;

H (k) Interest on all sums payable calculated at 4% per annum from 31 January 2007 for items (a) and (c) above and at 4% per annum from the date hereof for item (g), (h) and (i) above until full settlement;

I (l) Costs.

Principles

Claim By The Plaintiff For Goodwill Upon Leaving The Law Firm

[11] With respect to this claim, the court recorded that this claim is not based on contractual agreement but rather on equity.

[12] What really is "goodwill"? It is easier to experience it than it is to express it. Easier to discern it when it is there than to define it. It is one of those things that are invisible but no less real. Even a coffee shop has it as was expressed by His Lordship Abdul Hamid Embong J (as he then was) in *Teoh Swee Hee v. Tio Hock Thye & Anor* [1997] 1 CLJ Supp 400 at headnote 8:

> The plaintiff has satisfactorily shown that there is goodwill attached to the coffee shop. Firstly, the nature of the business itself rests upon goodwill. Then there is the fact that the defendants, after the dissolution notice, chose to continue with the same business, under the same name and on the same premises of the former coffee shop. **Goodwill although invisible is an asset of the partnership**. In effect, the defendants are holding the goodwill in trust for the plaintiff. The Court therefore holds that this goodwill must be accounted for as part of the partnership assets and be equitably distributed. (emphasis added)

[13] Way back in the early 1900's before the concepts of marketing, branding and business networking came into vogue, Lord MacNaghten in delivering his speech in the House of Lords in *Commissioner for Inland Revenue v. Muller & Co's Margarine Ltd* [1901] AC 217 at pp. 223-224, had conceptualised it this way:

> What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. **It is the one thing which distinguishes an old-established business from a new business at its first start**. (emphasis added)

[14] The learned judge in the Indian case of *State of Rajasthan and Anor v. The Bundi Electric Supply Co* AIR 1970 Raj 36 had tried to tangibly expressed that which is inherently intangible and invisible in these graphic words:

> ... in its legal sense the word "goodwill" means every affirmative advantage as contrasted with negative advantage that has been acquired in carrying on the business, whether connected with the

premises, or its name or style and everything connected with it, or carrying with it, the benefit of the business. It includes the whole advantage of the reputation, and connection of the firm or owner, which may have been built up by years of hard work, or gained by lavish expenditure, beyond the mere value of capital stock and property embarked in the business, in consequence of the public patronage and encouragement, which is received from habitual or constant customers. It is that species of connection in trade, which induces customers to deal with a particular firm or concern … It has no meaning, except in connection with a continuing business. It is treated as part of the assets of the firm. In other words goodwill represent business reputation. The sale of a goodwill implies the probability that the old customers will resort to the old place, that is, to the established business, wherever it may be situated.

[15] Learned counsel Miss Mary Anthony for the defendants pointed that a solicitors' business is a purely personal one and there can be no goodwill, strictly speaking, attaching to it. She quoted from the *Halsbury's Laws of England*, 4th edn., Reissue (vol. 33(1)) para. 375. She referred to the case of *Commissioner of Inland Revenue v. Muller & Co's Margarine Ltd* (*supra*) at p. 221 where it was observed:

... (5) Where the business is entirely personal and not concerned with the premises, the term is popularly but I accurately applied: eg, it is "**wholly inapplicable to a solicitor's business, which has no local existence but is entirely personal** ..." (emphasis added)

[16] I think the position can be best summarised in the explanation provided by the *Halsbury's Laws of England*, 4th edn., Reissue (vol. 33(1)) para. 375 where it is acknowledged that:

... yet in partnership deeds the goodwill is sometimes treated as an asset and provision is made for dealing with it either in the event of death of a partner or the dissolution of the firm.

[17] However the evidence led and which this court has no good reason to reject was that at all material times there was a representation in writing from the plaintiff's solicitors then as well as in the various drafts exchanged though not signed that there shall be no goodwill payment by the defendants upon the plaintiff leaving the firm on 31 January 2007 because of his Parkinson's disease.

[18] The relevant letters from the plaintiff's previous solicitors to the defendants and the defendants' replies would be revealing of what had transpired on the issue of the claim for goodwill. There was the letter dated 28 May 2008 where the plaintiff's previous solicitors wrote as follows:

> ... we are instructed that **our client had in error not informed you that there is payment owing from you for the goodwill** enjoyed by our client in the firm.
>
> Our client wishes to claim 80% of two third of the average of the gross fee income for years 2004, 2005, 2006 ... (emphasis added) (page 48 of Bundle F)

[19] The defendants' through their solicitors replied as follows by their letter of 29 May 2008 (p. 17 of bundle B):

> ... Kindly be notified that there is no agreement whatsoever between the Incoming Partners and your client on goodwill payments.
>
> Your client had expressly informed the Incoming Partners to take over this Firm with no goodwill payments whatsoever to be paid to your client [as] evidenced by all draft Agreements that you have prepared for your client up to date.
>
> ... The Incoming Partners do not owe your client any claims on goodwill ...

[20] The draft Retirement from Partnership Agreement of 25 June 2007 had a cl. 4.3 that reads:

> The Continuing Partners are **not required to pay the Retiring Partner** any amount merely for the Retiring Partner's name in the **goodwill** of the firm. (emphasis added)

[21] There was another draft of 22 May 2008 on substantially the same terms as the draft of 25 June 2007 wherein there was also a cl. 4.3 that reads nearly the same as the previous cl. 4.3 as follows:

> The Continuing Partners as previous employees of the Partnership are not required to pay the Retiring Partner any amount for the Retiring Partner's goodwill in the firm.

[22] It is unfortunate that by 22 May 2008 the agreement for Retirement from Partnership had not been executed when the defendants referred to in the draft agreement as the first incoming partner and second incoming partner had continued and carried on the litigation practice in the same office premises of about 1,200 sq ft bearing address Suite 2105C, 21st Floor, Wisma Hamzah Kwong Hing, No. 1, Leboh Ampang, 50100, Kuala Lumpur. In fact in the recital to the draft of 22 May 2008 it is expressed as follows in recital 1.4:

> The 1st Incoming Partner and the 2nd Incoming Partner are desirous to take over the share of the Retiring Partner in the Partnership and the Remaining Partner is desirous of consenting to such proposal. (The 1st Incoming Partner, the 2nd Incoming Partner and the Remaining Partner shall be called the Continuing Partners.)

[23] The remaining partner is Mr Sulaiman Hew and the retiring partner the plaintiff.

[24] The other clauses setting out the intention of the parties are cls. 2.1, 2.2 and 2.4 and are reproduced below:

> 2.1 The Retiring Partner shall retire from the Partnership on 31-1-2007 (the Succession Date).
>
> 2.2 The Retiring Partner's retirement from the Partnership shall not dissolve the Partnership and the Partnership shall continue (subject to clause 12) as a Partnership between the Remaining Partner, the 1st Incoming Partner and the 2nd Incoming Partner.
>
> 2.4 The 1st Incoming Partner and the 2nd Incoming Partner shall take over the shares of the Retiring Partner equally.

[25] In the cover letter to this draft of 22 May 2008 to the defendants, the plaintiff's solicitors Kanesalingam & Co had stated that they trust that the defendants would find the terms of the draft to be in order.

[26] There was the objection raised by the defendants that the plaintiff should have sued Mr Sulaiman Hew and not the defendants because the defendants' 80% equity in the partnership was given to them by Mr Sulaiman Hew. However as late as the

draft agreement of 22 May 2008 it was not so. The defendants and Mr Sulaiman Hew are of course entitled to treat the accounts differently from a pure accounting perspective but that does not change what was in essence a continuity of the partnership by the defendants taking over the plaintiff's 80% equity in the said firm. There was also no notice of dissolution of the partnership given by Mr Sulaiman Hew to the plaintiff and indeed the defendants and Mr Sulaiman Hew have carried on the practice as if it was a continuation of the said firm. The defendants are at liberty to join Mr Sulaiman Hew as a co-defendant or a third party if they are minded too. I cannot say that the case as pleaded by the plaintiff reveals that the plaintiff has no cause of action against the defendants.

[27] The plaintiff further testified that it was the said firm's accountant, one Mr Shankar, who had advised him that based on the accounts of the said firm there was no goodwill payment element. The plaintiff now says it is wrong advice. Perhaps that is what is meant by the plaintiff when his previous solicitors asserted that "... our client had in error not informed you that there is payment owing from you for the goodwill ...". If that be the case, it is for the plaintiff to sue the said Mr Shankar as the defendants were then only legal assistants of the said firm and as they testified, had there been the need to pay goodwill they would not been interested to consider taking over the legal practice from the plaintiff. The defendants gave evidence that the collection of fees had been gradually declining for the three years prior to the plaintiff exiting the said firm in January 2007. There were mounting debts and the difficulties of making ends meet with a myriad of problems of arrears of rental and even staff salary besetting them. The evidence of Mr Sulaiman Hew and not challenged by the plaintiff was that around late January 2007 the defendants showed him a list of liabilities which exceeded RM100,000 of the litigation branch of the said firm. He also made this known to the plaintiff. Bearing in mind such problems they had to battle and the uncertainty of any new venture, they did not have the appetite for a further outlay of capital in the form of goodwill payment to the plaintiff.

[28] Plaintiff's counsel Mr Shanmuga submitted that this court cannot rely on the draft agreements exchanges between the parties and the correspondence indicating that no goodwill payment will be imposed as conclusive and binding on the plaintiff

as this was in the context of a without prejudice communication and in any event the negotiation did not mature into a concluded contract. He cited as authority the case of *Rush & Tompkins Ltd v. Greater London Council and Another* [1988] 3 All ER 737. Whilst that may be true for a claim founded on contract the same cannot be true for a claim based on equity as the plaintiff asserted his claim is based. Having represented to the defendants that there shall be no goodwill payment, the plaintiff cannot now resile from it where the defendants have acted on such a representation and carried on the legal practice with respect to continuing the work on the uncompleted files and also collecting the fees payable for work done and billed before the plaintiff left the said firm and paying the plaintiff's liabilities incurred before his departure from the partnership.

[29] Conversely the position under contract would be that there cannot be a claim based on goodwill payment when no amount had been agreed upon or for that matter a method for calculating the goodwill.

[30] The defendants had relied on the oral and written representations of no goodwill payment and the plaintiff is certainly and clearly estopped from asserting the exact opposite now. The defendants had effectively continued with the law practice and had acted on the plaintiff's representations to them. It would be inequitable in the circumstance to allow the plaintiff to now resile from the position that he had taken.

[31] There is a further reason why in equity the claim for goodwill would be inequitable in the circumstances of the case.

[32] The court takes into consideration that it has not been the culture of the firm to charge for goodwill when a partner joins the firm and the fact that no goodwill payment is due when a partner leaves the firm. Mr Sulaiman Hew gave a brief sketch of the genesis of the said firm. The founding members were Mr Sulaiman Hew and the late Tan Sri Hamzah Abu Samah when they started the firm in 1985 together with another partner. According to Mr Sulaiman Hew, goodwill if any belonged to him and the late Tan Sri Hamzah.

[33] The name Hamzah Abu Samah & Partners (now known as Hamzah Sulaiman & Partners) existed even before the plaintiff joined the said firm. The plaintiff admitted that he did not have to pay any goodwill when he joined the said firm. It is not disputed that it was Mr Sulaiman Hew that invited the plaintiff to join the litigation branch of the said firm in 1991. I can accept the evidence of Mr Sulaiman Hew that the litigation department was already a thriving department and that as his conveyancing work was increasing he could not at the same time handle the growing litigation workload. The plaintiff did not have to pay any goodwill for his 80% share in the litigation department with the other 20% being held by Mr Sulaiman Hew. When Tan Sri Hamzah Abu Samah retired as a partner around 1998, the plaintiff and Mr Sulaiman Hew did not have to pay any goodwill to Tan Sri Hamzah Abu Samah. Mr Sulaiman Hew also informed the court that had he known that the plaintiff was insisting on the defendants paying goodwill, he would have objected. According to Mr Sulaiman Hew, that was not the basis upon which the plaintiff joined the said firm and it should not be the basis upon the plaintiff leaving, that is the payment of goodwill for joining and being paid goodwill upon leaving the partnership. Mr Sulaiman Hew gave evidence as follows and this was not challenged under cross-examination:

> When the branch of the Firm was opened in 1991, I passed on to the Plaintiff profitable litigation files with banks and corporate clients as existing clients. The Firm and goodwill was already established by me. Instead of expanding the litigation department, the Plaintiff caused the decline in litigation files gradually.

[34] It was not disputed that the plaintiff had gradually stopped taking in new litigation works around 2003. The second defendant gave evidence that the existing banking files after 31 January 2007 were around ten files which mostly were Sessions Court recovery claims. The first defendant gave evidence with respect to what happened to the files she handled after 31 January 2007 as follows:

> Some files were transferred to the Plaintiff's Firm under the name of Messrs Thurai. Most of the corporate files were transferred to other firms on clients' instructions. I had only a handful of files, ie, less than 10 files of the client Gan Kok Beng which were not sufficient to cover the overheads of the branch of the Firm one

A by one around that material time. I was unable to draw a decent partner's drawing. Please refer to Bundle X last page Attachment 4 which shows the Defendants' drawings for the year 2007 was only RM27,000 and RM22,000 respectively. I had to bank in RM20,000 of my own cash as Capital to run the Firm.

B **[35]** The defendants submitted that the plaintiff's conduct of abandoning the litigation branch of the said firm *albeit* constrained by failing health proved that the 80% shares are worthless. The defendants submitted that this is further evidenced by the losses made in the accounting year of 2006 (pp. 139-147 of bundle H).
C The defendants referred to the Court of Appeal case of *Mohamed Ismail Mohamed Shariff v. Zain Azahari Zainal Abidin & Ors* [2010] 5 CLJ 153 where at p. 176 the proposition that at the time of the plaintiff's retirement the partnership had negative goodwill and therefore the plaintiff's absolute share of 5% was worthless was
D accepted by the court.

[36] Looking into the overall circumstances of this case in the light of the representations made, the culture of the firm and the fact that Mr Sulaiman Hew himself would not have agreed to
E such an agreement on payment of goodwill when the plaintiff left the partnership and also considering the gradual decline in work as a result of the plaintiff's illness, it would be inequitable in all the circumstances of the case for the plaintiff to now claim for goodwill.

F **[37]** However this court finds that there were some arrangements and understanding arrived at by the parties with respect to three matters at least. The affairs of the partnership had to be attended to and the partnership assets in the nature of fees billed but not
G collected have to be accounted for and distributed. In spite of the fact that the agreement was not signed, I find as a matter of fact that the parties had both substantially and in the spirit of draft agreement performed the terms and conditions found therein though not to completion which had resulted to the plaintiff filing
H this action. It cannot be disputed that the defendants and Mr Sulaiman Hew did continue with the litigation department of the said firm with the first and second defendants as now holding 80% of the shares in the partnership. There was the letter from the said firm to the Bar Council dated 5 March 2007 stating that
I the plaintiff had ceased to be partner with effect from 1 February 2007 and that the defendants had been appointed as partners of the said firm with effect from 1 February 2007.

[38] Work on the files left behind by the plaintiff were continued by the defendants; billings and collections had to be done and liabilities incurred by the plaintiff paid off from the fees collected. Equity would deem done that which ought to have been done. The defendants have both continued far too long into the newly constituted partnership such that it does not lie in their mouths to say that as there was no executed agreement, then nothing has been agreed or is binding on the parties. These matters were indeed referred to in the draft agreement as late as the draft of 22 May 2008 and shall now be discussed below.

Annie Quah's Fees And Bills

[39] The plaintiff had filed a notice of change of solicitors with respect to this file after leaving the said firm. However four bills proforma all dated 22 February 2008 were sent to client for about RM1 million. Evidence adduced is that the client is disputing this bill. It is not disputed that the work on the file was done by the plaintiff and assisted by the defendants as his then legal assistants. The client herself appeared not to have consented to the transfer of her files to the plaintiff. She wrote in a letter to the plaintiff appearing at p. 386 of bundle E as follows:

> Mr Thurai, you know you are not well. You are very ill and you cannot attend to my matters ...

[40] This court finds that there was an agreement where fees collected for these bills for work done by the plaintiff before he left the partnership should be split 80%:20% between the plaintiff and Sulaiman Hew. As such the court directs that the defendants' firm of Hamzah Sulaiman and Partners do proceed with taxation of the bill of costs on a solicitor-client basis. Indeed in both the draft agreements of 25 June 2007 and 22 May 2008 all the parties and Mr Sulaiman Hew as remaining partner had provided as follows with respect to "Work in Progress" under cl. 3 as a way of winding up the affairs of the partnership and the distribution of the partnership assets in the fees collected after the plaintiff had left the partnership. Clause 3.11 reads as follows in both drafts:

> All files in respect of Annie Quah Lay Nah shall be taken over wholly by the Retiring Partner and the fees and costs for work done prior to and up to the Succession Date shall be apportioned

A and shared between the Retiring Partner and the Remaining Partner exclusively in the ratio 80% for the Retiring Partner and 20% for the Remaining Partner from the fees received after the sale of Annie Quah Lay Nah's share in the disputed land on a future date. The fees payable by Annie Quah Lay Nah up to the
B Succession Date shall be taxed by the Continuing Partners. The reasonable costs of preparing, presenting and taxing bill of costs shall be borne by the Retiring Partner and the Remaining Partner in the 80:20 ration respectively.

[41] Seeing that the plaintiff's solicitors here are prepared to
C argue on behalf of his client on the hearing of the taxation of costs, the court directs that the defendants do furnish the said counsel the necessary cause papers and relevant documents for purpose of the attendance in court for taxation. The filing fees paid by the defendants are to be recouped from the amount taxed
D and recovered. The plaintiff shall pay a sum of RM10,000 to the defendants for work done in the drafting the bill of costs from the amount recovered. As agreed the sums taxed and recovered shall be paid 80:20 to the plaintiff and to Sulaiman Hew in that proportion.

E

Gan Kok Beng's Fees And Bills

[42] There is evidence that a sum of RM101,000 was recovered in a party-to-party taxation of costs with respect tax the second defendant, the wife of Gan Kok Beng in a suit by Jupiters Ltd;
F Gan Kok Beng being the first defendant. What had happened was that the defendants have deducted RM30,000 being their fees for argument on whether costs should be granted to the second defendant in that suit and also for attendance in court for taxation of costs. These were done after the plaintiff had left the
G partnership.

[43] There is an arrangement not disputed by the parties that these fees is to be shared 80:20 between the plaintiff and Sulaiman Hew. The balance of RM71,000 is to be shared in that formula.
H So the amount due to the plaintiff is RM56,800. However instead of paying this amount to the plaintiff, the defendants had paid this amount to the firm of Hamzah Sulaiman & Partners in Pandan Indah branch which is under the sole control of Mr Sulaiman Hew. There is no evidence that the plaintiff consented to this
I payment to the Pandan Indah firm.

[44] Apparently this was done on account of some monies owing to Mr Sulaiman Hew by the plaintiff. However there was no evidence before the court on this matter in what is essentially a claim by the plaintiff against the defendants and not against Mr Sulaiman Hew. In fact the plaintiff and Mr Sulaiman Hew are quite cordial towards each other and have no problems communicating one with the other. In any event Mr Sulaiman Hew can still make his relevant claims against the plaintiff if there is evidence in support of his claims.

[45] I consequently ordered that the defendants do pay the sum of RM56,800 to the plaintiff together with interest at 4% per annum from date of writ to settlement.

Accounts Of Fees Collected After Plaintiff Left The Partnership

[46] There is evidence from the defendants that all fees collected after the plaintiff had left the said firm were banked into two accounts namely RHB account and Bank of Tokyo account. There is also evidence that some debts of the plaintiff arising out of the partnership with Mr Sulaiman Hew were discharged from this collection of fees.

[47] This court directs that the Registrar do conduct an accounts inquiry which the plaintiff had prayed confined to the following:

(a) A determination of how much fees, service tax and disbursements were collected with respect to the litigation files after the plaintiff left the partnership for work done during the partnership as evidenced in the two banks account stated unless there is evidence to the contrary;

(b) A determination of the liabilities discharged on behalf of the plaintiff incurred by him before he left the partnership;

(c) The defendants shall be entitled to a 20% of the surplus if any being their efforts in collecting the fees and the administrative work involved;

(d) The balance if any shall be divided 80:20 between the plaintiff and Mr Sulaiman Hew.

(e) The court directs that the above sums if any due shall be paid out to the parties referred to above. Interest at 4% per annum shall run from date of assessment of the amounts due to the parties until realisation.

A (f) The plaintiff shall be at liberty to apply for relevant discoveries.

(g) For the avoidance of doubt the liabilities of the partnership before the plaintiff left the partnership shall be also be borne 80:20 between him and Mr Sulaiman Hew.

B **[48]** The other prayers of the plaintiff having been withdrawn are hereby struck out.

[49] This court also ordered each party to bear his or her own costs.

C

D

E

F

G

H

I